

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**SALLY BARTH**

**APPELLANT,**

**v.  
DAVID BARTH**

**RESPONDENT.**

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DOCKET NUMBER WD73727

DATE: April 10, 2012

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Appeal From:

Platte County Circuit Court  
The Honorable Gerald D. McBeth, Judge

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Appellate Judges:

Division One: Cynthia L. Martin, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

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Attorneys:

Gail Berkowitz-Gifford, Kansas City, MO and James D. Williamson, Jr., Independence, MO, for appellant.

James D. Boggs, Kansas City, MO, for respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**SALLY BARTH,**

**APPELLANT,**

**v.**

**DAVID BARTH,**

**RESPONDENT.**

No. WD73727

Platte County

Before Division One: Cynthia L. Martin, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

Sally Barth appeals from the trial court's judgment decree of dissolution of marriage. Wife contends that the trial court erred in (1) awarding her \$2,500 per month in non-modifiable maintenance for one year; (2) accepting David Barth's evaluations of the business interests owned by parties; (3) ambiguously ordering the division of the parties' Victorian furniture; (4) ordering her responsible for fifty percent of all college expenses for the parties' children; and (5) failing to award Wife attorney's fees.

**Affirmed.**

Division One holds:

(1) It was not an abuse of discretion for the trial court to exclude consideration of Wife's future, contingent obligation to pay tuition from its determination of Wife's reasonable needs in light of Wife's testimony that she anticipated the ability to secure forgiveness of her tuition obligation.

(2) The trial court did not accept Wife's income and expense statement as representative of her "reasonable needs" but even if it had, the trial court was not required to award maintenance in the amount of the difference between Wife's "reasonable needs" and her income.

(3) Although maintenance should not be conditioned upon happenings in the future, an exception exists when evidence shows the circumstances of the parties would likely change in the future. Courts can award rehabilitative or limited duration maintenance where a party needs further training or education to become self-supporting. Wife's testimony provided substantial evidence of an impending financial change on which the trial court based its award of limited duration maintenance.

(4) In light of the trial court's clear and supportable findings that neither party could afford to support his or herself, the trial court could have found that no maintenance should be awarded to Wife. But for Husband's consent and invitation for the trial court to do so, it would

have been error for the trial court to order or presume the borrowing of funds in determining Husband's ability to pay limited duration maintenance.

(5) Although maintenance awards should be modifiable where future events pertinent to the issue of maintenance are uncertain, Wife's testimony supported the determination that Wife's future ability to support herself is not uncertain.

(6) The record does not support Wife's assertion that both the appraised value of the real estate owned by the business entities, and the value of the parties' ownership interests in the business entities, were discounted by a duplicative carrying cost.

(7) Husband's testimony supported the trial court's finding that although Husband does not desire to sell a business entity awarded him, it may be necessary to do so, supporting the trial court's consideration of the costs and tax effects of its sale in valuing the parties' ownership interest in the business.

(8) The trial court's finding that forty-five percent minority discount should be applied to the value of the parties' ownership interests in the business entities was not against the weight of the evidence.

(9) Wife failed to preserve her argument that the trial court's judgment was ambiguous in its division of the parties' Victorian furniture pursuant to Rule 78.07(c).

(10) The trial court did not abuse its discretion in ordering Wife to pay fifty percent of the children's college expenses.

(11) The trial court's decision to require each party to pay its own attorney's fees was not an abuse of discretion.

Opinion by Cynthia L. Martin, Judge

April 10, 2012

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